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10

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,526	08/19/2003	Brian M. Wilk	27087/39520	4491

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EXAMINER

MENDIRATTA, VISHU K

ART UNIT PAPER NUMBER

3711

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

571

Office Action Summary	Application No. 10/643,526	Applicant(s) WILK ET AL.	
	Examiner Vishu K Mendiratta	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/27/04, 9/30/04</u> | 6) <input type="checkbox"/> Other: ____. |

1. Claims 1-3, 6,9-13,15-22,25-26,45-51 rejected under 35 U.S.C. 102(b) as being anticipated by Potter (2052035).

Potter teaches a game character (Fig.8-11) having a base (244,245), devise for measuring distance (232), visible indication of distance (242), audible indication of distance (6:25-30), kicking device/weapon (253), projectile launcher (258,259,260), axle (236) and wheel/roller (238,248) attaching the surface, a plurality of gear teeth (249) and clicker (250) within a chamber (246), as can be seen that indicia (242) are alternately seen and shielded in the playing piece through the open aperture at the top, the axle fixedly secured to wheel(237) and pinion (235) and a rack(239) with indicia.

In claims 1,6,18,45: Potter clearly teaches newly added limitations of a mechanically functional combat (Combat=intended use) component (171) moveable with respect to the base of the game figure(compare Fig.13c vs. Fig.13d) to physically engage (Fig.12A-C) in simulated battle (simulated battle=intended use).

In claim 26: Potter teaches rack (239) having multiple surfaces numbered 1-5 (242).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4,14 rejected under 35 U.S.C. 103(a) as being unpatentable over Potter.

Art Unit: 3711

Potter teaches playing piece with visual indicator and audible indicator in separate embodiments but not within the same embodiment.

Whereas a person with normal vision can read the indicia, it would not be possible for a visually challenged person to play the game. In order to help both categories, it would have been obvious to include both visual indicia and audible indicator. One of ordinary skill in art at the time the invention was made would have suggested both visible indicia and audible indicator within same embodiment.

Potter teaches all limitations except teeth on gear.

In the art area of amusement such recording devices with gear teeth arrangement are commonly known and used. In order to create a variation it would have been obvious to use such techniques. One of ordinary skill in art at the time the invention was made would have used gear teeth arrangement in a game piece. It may be noted that

4. Claims 7,8,23,24 rejected under 35 U.S.C. 103(a) as being unpatentable over Potter in view of Andrews (2003/0220044 A1).

Potter teaches all limitations except that it does not teach a spring loaded weapon launcher.

Andrews teaches a spring loaded (summary) weapon launcher clearly providing motivation to add a spring between first and second portions (paragraph 19 and 38).

Games and amusement articles with such arrangements are commonly available in toy stores. Such launchers simulate real weapons and attract people. In order to attract people it would have been obvious to simulate playing pieces to real launchers.

Art Unit: 3711

One of ordinary skill in art at the time the invention was made would have suggested providing spring launcher for simulation of real weapons and attract people.

In claims 8, 24: Potter clearly teaches a first portion(166) connected to base (bottom of figure), and a second portion which is a mechanically functionally combat portion (171) and capable of moving relative to first portion (Fig.13c-d).

Response to Arguments

5. Applicant's arguments filed 12/27/04 have been fully considered but they are not persuasive.

Applicant's remarks on page 13, last paragraph regarding claims 1,18,45, not persuasive: please see rejection lines underlined.

Applicant's remarks on page 14, last paragraph regarding claims 15-17,25,26, not persuasive: When rack 239 moves the indicia 242 become visible from aperture (see window in Fig.8) and shielded alternately. Further teaches an axle (236), a wheel (237), a pinion (235), a plurality of teeth (240) and a rack (239). Note that a covering 231 can be treated as a face-plate. Potter teaches rack (239) having multiple surfaces numbered 1-5 (242).

With respect to claims 4, the cited reference may not expressly provide motivation of a figure having both visual and audio features within same embodiment but the examiner takes the position that a when a piece with a clicker in Fig.11B moves, it makes clicking sound (audio) and due to the fact that it also physically moves to a distance is a (visual) indicator of the movement.

With respect to claims 14,17, using gears vs. rollers is a design choice.

Art Unit: 3711

Applicant's remarks on page 18, last paragraph regarding claims 8,24, not persuasive: please see rejection lines underlined.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vishu K Mendiratta whose telephone number is (571) 272-4426. The examiner can normally be reached on Mon-Fri 8AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571) 272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vishu K Mendiratta
Primary Examiner
Art Unit 3711

A handwritten signature in black ink, consisting of a stylized 'V' followed by a cursive 'K' and a long horizontal stroke extending to the right.

VKM
March 11, 2005